UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/SR.145
23 August 1993

ENGLISH
Original: FRENCH

COMMITTEE AGAINST TORTURE

Tenth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 145th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 23 April 1993, at 10 a.m.

Chairman: Mr. VOYAME

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.145/Add.1 and that of the third part (public) as document CAT/C/SR.145/Add.2.

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GE.93-13104 (E)

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Report of Spain (CAT/C/17/Add.10)

At the invitation of the Chairman, Mr. Borrego-Borrego and Mr. Los Arcos Galbete took a place at the Committee table.

1. Mr. BORREGO-BORREGO (Spain) said that in drafting its first periodic report (CAT/C/17/Add.10), his country had followed the suggestions made by Committee members in 1990 during consideration of the initial report. It should be noted that the bill on the new Penal Code mentioned in the report would be taken up by the new Government formed after the recent dissolution of the Parliament by the President of the Spanish Government, pursuant to article 115 of the Constitution. As indicated in paragraph 23 of the report, a computer-generated printout was annexed to the report, giving judgements delivered by the Criminal Division of the Supreme Court and by the Constitutional Court, from 1987 onwards, in which the term "torture" appeared. Those judgements in which the term was used inappropriately, in the ordinary or non-technical sense of the term, should obviously be disregarded. From the judgements actually referring to torture, it could be seen that the courts were accurately evaluating that offence. His delegation would be glad to reply to any questions Committee members might wish to ask.

2. Mr. GIL LAVEDRA, Rapporteur for Spain, said that during its examination of Spain's initial report, the Committee had concluded that the Spanish Government was doing its best to meet its obligations under the Convention. It had, however, expressed some concern at that time, in particular, regarding the suspension of the constitutional provisions restricting the maximum period of police custody to 72 hours in the case of offences committed by armed groups or terrorists, and regarding the holding of terrorists incommunicado. Members had also wished to know whether the terms "torture" and "cruel, inhuman or degrading treatment" had been specifically defined in Spanish law and how medical examinations were carried out in prisons; they had requested fuller information on the application of the principle of universal jurisdiction under Spanish law. In that respect, it was unfortunate that the report before the Committee did not really answer the questions raised. More generally, he regretted that it contained less information than its predecessor and that many of the points made regarding application of the various articles of the Convention bore little relation to the content of the articles.

3. It was not essential for Spanish law to reproduce the definition of torture contained in article 1 of the Convention word for word. What mattered was that the acts referred to in that article were punishable and that the sentences reflected the gravity of the offence committed. He was not convinced that articles 204 bis and 551 of the Spanish Penal Code covered all the cases envisaged in article 1 of the Convention. The scope of article 204 bis of the Penal Code was more restrictive than that of article 1 of the Convention, which defined "torture" as meaning any act by which severe pain or suffering, whether physical or mental, was intentionally inflicted on

a person for such purposes as obtaining from him information or a confession, or intimidating or coercing him, when such pain or suffering was inflicted by a public official or other person acting in an official capacity. Thus, the facts described in paragraph 26 of the report were covered by article 1 of the Convention but did not fall within the purview of article 204 bis of Spain's Penal Code. Similarly, the mere citation of the Convention's provisions by the Constitutional Court in its judgement of 27 June 1990 did not amount to an actual implementation of the Convention.

4. The information in paragraph 15 of the report with regard to implementation of article 3 of the Convention had no bearing on the contents of that article. Paragraph 15 stated that nearly 100 persons of central African origin, who had tried to settle illegally in Spanish territory, in North Africa, had initially been turned away and then, after having been refused entry into Moroccan territory, had been authorized by the Spanish Government to settle in Spanish territory pending the solution of that delicate humanitarian problem in accordance with the legislation in force. How did those events demonstrate that article 3 of the Convention was being properly implemented?

5. With regard to article 10 of the Convention, dealt with in paragraph 19 of the report, the human rights courses provided through the training and continuing education centres for State security forces and civil servants seemed very inadequate for a country with Spain's resources.

6. Where articles 12 and 13 of the Convention were concerned, paragraphs 23, 24 and 25 of the report had no connection whatever with the implementation of those articles.

7. The case cited in paragraph 26 of the report, dealing with article 14 of the Convention, also had no bearing on the content of that article, which stipulated that each "State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation".

8. Paragraph 27 of the report reproduced a judgement of the Constitutional Court of 15 April 1991, stating that "... each of the defendants was questioned on the specific and detailed contents of his statements to the police; the defendants used this opportunity to deny their original statements and allege that the statements in question were made under pressure and torture. This allegation of torture, which had not been made before, either by the defendant or the defence counsel present at the police proceedings, cannot be taken into account by this Court in order to invalidate the statements". That judgement was completely at variance with the provisions of article 15 of the Convention, which stipulated that any statement which was established to have been made as a result of torture could not be invoked as evidence in any proceedings. If the provisions of the Convention were directly applicable in Spanish law, article 15 could, on the contrary, be used to invalidate evidence given during the proceedings.

9. During their consideration of the initial report, Committee members had asked what steps the Spanish Government took to safeguard the right of prisoners to examination by a forensic physician and had requested a copy of

the directives on medical treatment for prisoners, issued by the Ministry of the Interior in June 1981. The Spanish delegation had in the meantime provided the Committee with those directives, which stated that medical examinations for prisoners were compulsory and that the Ministry of the Interior required the competent authorities to be punctilious in the matter. Were those directives still in force? Compulsory medical examinations for prisoners would be a formidable weapon against torture in prisons.

10. He had received a great deal of information from non-governmental organizations on ill-treatment of prisoners in Spanish prisons. Amnesty International, for example, had reported allegations of ill-treatment made by an Egyptian prisoner and an Israeli prisoner detained in Ibiza. Eight British nationals had complained of mistreatment by the local police of Benidorm in May 1992. A trade union representative had allegedly been subjected to ill-treatment in Mallorca in May 1992. Could the Spanish delegation provide the Committee with information on those incidents? Furthermore, the administration of justice was apparently often rather slow, whereas the Convention called for prompt and impartial investigation. He cited some cases, dating back several years, on which a final judgement had been delayed or, even worse, was still outstanding. He referred in that regard to a report from the Parliamentary Commissioner, annexed to Spain's initial report, in which he had deplored delays in legal proceedings. Could the Spanish delegation offer some explanation?

11. He would like to know whether Committee members could obtain copies of the convictions in the proceedings brought on grounds of torture referred to in paragraph 29 of the report.

12. Lastly, paragraph 25 of the report cited a Supreme Court judgement of 24 February 1990, in which it was stated that an act of torture was extremely serious not only because those who committed it were worthy of reproach but also because their commission of that offence compromised the credibility of the social, democratic and constitutional State in whose name they had acted. How, then, was it possible to explain the fact that the Government sometimes decorated officials who had previously been found guilty of acts of torture, as in the case of a civil servant who had been convicted by the Bilbao court in 1991 and who currently held an official post in Bolivia, and in that of another individual, convicted in January 1992, who was currently adviser to the Minister of the Interior on anti-terrorist measures? Could the Spanish delegation explain the Government's position with regard to those facts, which were hardly in keeping with the spirit of the Convention or the previously mentioned Supreme Court judgement.

13. Mr. BEN AMMAR, Co-rapporteur for Spain, said that while Spain was making praiseworthy efforts to meet its obligations under the Convention, there were still some unsatisfactory aspects. He shared Mr. Gil Lavedra's views on article 1 of the Convention: the definition of torture in that article included the infliction of torture as a punishment. That point was not covered in Spanish legislation even though reputable non-governmental organizations had reported numerous cases of torture inflicted as punishment; in fact such acts were apparently not punishable in Spain.

14. With regard to the same article of the Convention, it might be asked why article 582 of the Penal Code provided for a "short-term imprisonment" (CAT/C/17/Add.10, para.4), when the Convention required appropriate penalties. Similarly, article 582 of the Penal Code provided that an official who deviated from or exceeded his duties was committing a less serious offence than a private individual: that provision had the disadvantage of introducing a notion of absolute and relative illegality, which was unclear; it might be asked how and where the limit of "relative" illegality was to be found and whether, in the case of a State official bound by undertakings, the act of exceeding his authority did not rather constitute an aggravating circumstance.

15. Among the preventive measures taken to give effect to the Convention, the report mentioned that every prisoner admitted to a penitentiary establishment received an information document. However, various non-governmental organizations had failed to find any trace of such a document during their visits to prisons: it seemed therefore to be more a theoretical than practical measure. He suggested that the individuals concerned should sign the document thus proving that they had definitely seen it.

16. Because of its location, Spain was a transit country for would-be emigrants. The press had cited many cases of emigrants encountering enormous problems upon their arrival in Spain. Referring to article 3 of the Convention, he wished to know how the Spanish authorities ensured that returnees were not subjected to cruel or inhuman treatment in their home territory, especially since so many of them came from countries where human rights were flouted.

17. With regard to article 4 of the Convention, the report (CAT/C/17/Add.10) stated that security force members were dealt with by provincial courts: it would be useful to know how such courts functioned at the investigation stage and during trial and judgement. It would seem that the jurisdiction of those courts would have to be ended, in particular, because of the need to respect the principle of equality. The procedure had also been declared unconstitutional and he asked whether the reform of the Code of Penal Procedure would rectify that anomaly.

18. With regard to article 10 of the Convention, he would like to know more about the training programmes provided for the various officials involved. Another issue concerned article 11 of the Convention: reputable non-governmental organizations had reported that individuals under interrogation were frequently subjected to cruel, inhuman or degrading treatment. It would therefore be helpful to know how the systematic review of interrogation methods and practices provided for in article 11 was carried out in practice.

19. Paragraph 27 of the report stated that a confession obtained under torture was not, in and of itself, authentic evidence, thereby implying that it was taken into account to some extent. Would it not be more in keeping with the spirit of the Convention for the prosecution to be required to prove that the accused had not been tortured? A medical examination by an independent physician before and after interrogations would provide the prosecutor with a medical certificate which could be produced as formal evidence. Reputable non-governmental organizations had cited various

distressing cases already mentioned by the rapporteur. He would confine himself to pointing out that the system of police custody, under which a person could be held incommunicado for five days, could lead to abuse. Pre-trial detention was often too long and not infrequently lasted longer than the subsequent sentence. Lastly, prison conditions could sometimes be considered cruel or inhuman treatment: poor sanitary conditions, inadequate ventilation, overcrowding, repeated long periods of solitary confinement which sometimes had drastic psychological effects, frequent transfers from one prison to another making family visits difficult, arbitrary classification of unconvicted detainees in the "first degree" category. In the Barcelona court, the criminal prosecutor himself had allegedly accused 15 penal establishments of using torture.

20. The Government was certainly faced with challenging security problems. But article 2 of the Convention was clear: no circumstances of internal instability or other factors could be invoked as a justification of torture, and under article 16, the same applied to cruel and inhuman treatment. The Spanish Government seemed to be having some difficulty in strictly observing those provisions, and the Committee would like to know how it was planning to solve those problems. The new legislation enacted in that respect seemed to be open to many abuses, as the figures provided by the Ministry of the Interior itself led one to fear.

21. Mr. BURNS said that during the examination of Spain's initial report (CAT/C/5/Add.21), he had felt some optimism regarding developments in that country. Examination of the current report, however, was cause for some pessimism and he endorsed the statements of preceding speakers, particularly the legal analysis given by Mr. Gil Lavedra.

22. At the previous meeting with the Spanish delegation, he had asked for clarification of the relationship between the public authorities, the police, the army and the security forces. While some information had been provided on that subject, certain points remained unclear, namely the relationship between the police, the government attorney's office, and the judiciary, particularly in matters concerning security. It would be useful to have a specific example to illustrate the procedure prior to court appearance in cases involving persons who had used armed force. It had already been observed that Spanish domestic law did not seem to give full effect to the definition of torture under the Convention, since it recognized the existence of the offence of torture only where it had been used to obtain a confession. The provisions of the Convention certainly had the force of law in Spain, as did those of all the international instruments it had ratified; yet Spanish courts seemed to adopt a very restrictive approach to definitions established under international law. As other speakers had said, it would be useful to confirm that the provisions of the Convention definitely had the force of law in Spain, for example by obtaining access to official documents used to inform and train officials, including police and prison personnel, which gave a definition of torture, or to case law confirming that officials guilty of using torture for reasons other than to extort confessions had been prosecuted. Had cases other than the affair of Billy Mark and others been brought before the European Commission of Human Rights and what were those cases? Also, if the European Committee for the Prevention of Torture and

Inhuman or Degrading Treatment or Punishment had visited Spain, he would appreciate as much information as possible on the Committee's findings.

23. Mr. Gil Lavedra had referred to his concern about precedents in cases where police agents had been found guilty of acts that might be considered as torture, even in the restricted sense of Spanish law. Information collected inter alia by Amnesty International had revealed that the corresponding sentences were always very light: a maximum of 12 months' imprisonment, usually combined with suspension from duty. In fact, any sentence of less than 12 months was automatically suspended - at least in that type of case - and, what was even more disturbing, the guilty party was rarely suspended from duty; he might even be promoted or transferred while retaining the same rank. One of the reasons given to justify the latter practice was that judgements in those cases were usually the subject of an appeal and, according to the principle of the presumption of innocence, the party concerned could not be deprived of his privileges before the final judgement. He hoped that guilty parties who were not members of the police force also enjoyed the same privilege.

24. It appeared that once a suspect was presumed to be a member of an armed group, he could be held incommunicado for five days from the time of arrest. That was a matter of great concern: the countries which posed the greatest problems in terms of implementing the Convention were those where persons could be held incommunicado. The objectives of such treatment were only too clear: to break the prisoner's will, to interrogate him without the usual safeguards, and to deny him access to the advice of a third party. It was true that in his report to the Commission on Human Rights (E/CN.4/1993/26), the Special Rapporteur on torture had noted that in Spain holding a prisoner incommunicado for five days meant that his family was informed neither of the arrest nor of the place of detention, although a lawyer was appointed by the court; it would not, therefore, seem to be entirely a question of detention incommunicado. He would like to know which court appointed the lawyer, and at what stage in the proceedings it did so and what criteria it followed. In any event, that represented a significant guarantee for the parties involved even though, according to Amnesty International, there were apparently many cases where prisoners did not have access to a lawyer.

25. Lastly, he wished to know why Spain, which had contributed to the United Nations Voluntary Fund for Victims of Torture from 1987 to 1989, had ceased to do so: was that because of economic hardships or a change of policy on those issues?

26. Mr. MIKHAILOV said he wished to thank the Spanish delegation for its report, which contained valuable information on criminal law, including details of specific provisions of the new Penal Code. The report dealt essentially with the application and interpretation of the law in force, and contained various judgements of the Supreme Court and the Constitutional Court. It failed, however, to respond to all the questions that had been raised, in particular in relation to articles 5 to 9 of the Convention. In that connection, he asked whether more details could be provided on the organization and practical implementation of the provisions of the Convention.

27. Regarding the additional information in paragraph 29 of the report concerning the number of proceedings brought on grounds of torture, other speakers had already expressed surprise at those figures in view of reports from non-governmental organizations regarding the situation in the prisons.

28. Paragraph 12 of the report dealt with preventive measures. In that connection, he would like to know whether there were measures other than those mentioned, for example, in regard to penal procedure, arrest, police custody, or health. Lastly, he would like to know what measures the Government had taken, or planned to take, to disseminate information about the Convention: university courses, seminars for staff at the ministries of the interior and of justice, etc.

29. The CHAIRMAN said he associated himself with the questions raised by other Committee members and, like Mr. Burns, would like to know in particular whether, on the conclusion of the visit by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in April 1991, Spain had agreed to the publication of that Committee's report.

30. In reference to article 3 of the Convention, under which a person could not be expelled, returned or extradited to a State where he would be in danger of being subjected to torture, he noted that, under Spanish law, that ban appeared to be limited to extradition.

31. In respect of article 4 of the Convention, he believed that if the rule concerning the competence of a provincial court to judge offences committed by officials in the performance of their duties was now unconstitutional, that was by virtue of a decision of the European Court of Human Rights declaring that the examining magistrate and the judge pronouncing the sentence could not be one and the same person.

32. He deplored the fact that there had been no new developments in relation to article 5 of the Convention. The universal jurisdiction required by that article had not been clearly established and some change was therefore necessary.

33. With regard to article 14 and the issue of compensation, he would like to know on what grounds the subsidiary responsibility of the State or another public agency was engaged.

34. He was impressed by reports received from several non-governmental organizations whose credibility could not be impugned, in particular Amnesty International. He would like Spain's views on those reports and, more particularly, hoped the Committee could have more detailed figures on the number of ex officio investigations (instituted under article 12), the number of investigations arising out of complaints, the number of judgements and convictions, and the enforcement of judgements. It seemed in fact that, as a result of suspended sentences or amnesty, no public official had spent a single day in prison for acts of torture.

The first part (public) of the meeting rose at 11.25 a.m.